

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

TIMOTHY ANDREW MERFIELD,

Defendant and Appellant.

2d Crim. No. B190093
(Super. Ct. No. F381374)
(San Luis Obispo County)

ORDER MODIFYING OPINION AND
DENYING REHEARING
[NO CHANGE IN JUDGMENT]

THE COURT:

It is ordered that the opinion filed on February 21, 2007, be modified as follows:

On page 3, immediately preceding the first paragraph, the following new paragraph is added:

While we review the merits of appeals from *timely filed petitions* that are rendered technically moot during the pending of the appeal, we do so because the appellant is subject to recertification as an MDO, and the issues are otherwise likely to evade review due to the time constraints of MDO commitments. (*People v. Jenkins, supra*, 35 Cal.App.4th at p. 672, fn. 2; *People v. Gibson, supra*, 204 Cal.App.3d at p. 1429.) For the same reasons, trial courts consider the merits of timely filed petitions that are subsequently rendered technically moot as the result of the delays inherent in the judicial process, which are beyond the petitioner's control. Where, as here, the *petitioner*

causes the delay by waiting until after the commitment order has expired to seek relief, the petition is untimely and is subject to dismissal on the ground of mootness.

There is no change in the judgment. Merfield's petition for rehearing is denied.